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In The
SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,
v.
RONALD THOMAS WEBB,
Respondent.

On Petition for Writ of Certiorari
To The California Court of Appeal,
Second Appellate District, Division One

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

State law required a deputy sheriff to identify Webb before issuing a citation and releasing Webb for an infraction the deputy saw Webb commit. After Webb told the deputy he had identification in his wallet, did the Fourth Amendment permit the deputy to pull the wallet from Webb's pocket where Webb's clothing would have hidden his hands from the deputy had the deputy allowed Webb to retrieve the wallet?

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In The
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On Petition for a Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

The People of the State of California respectfully petition for a writ of certiorari to review a judgment of the Court of Appeal for the State of California, Second Appellate District, Division One.

OPINION BELOW

The opinion of the Court of Appeal was not published and is unreported. It is reproduced in the Appendix, *post*, at A-1 to A-5.

JURISDICTION

The Court of Appeal entered its judgment on January 28, 1999 and denied a rehearing on February 17. On April 28 the California Supreme Court denied a timely petition for review. Title 28, United States Code, section 1257(a) confers jurisdiction on the Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." Fourth Amend.

"A person shall not operate any bicycle or any vehicle or ride any animal on any sidewalk or parkway except at a permanent or temporary driveway or at specific locations thereon where the commissioner finds that such locations are suitable for, and has placed appropriate signs and/or markings permitting such operation or riding." Los Angeles County Code §15.76.080 (Book Pub. Co. 1998).

"Any person violating or failing to comply with any of the provisions of this Division 1 [the county "Traffic Code," §§15.04.010-15.80.150] shall be deemed guilty of an infraction, which shall be punishable upon a first conviction by a fine not exceeding $50.00, and for a second conviction within a period of one year by a fine not exceeding $100.00, and for a third or any subsequent conviction within a period of a year by a fine not exceeding $250.00." Los Angeles County Code §15.12.010.A. (Book Pub. Co. 1998).

The Appendix, *post*, at A-10 to A-17, contains the text of the following additional pertinent statutory provisions: Cal. Business and Professions Code §§4140, 4321(a) (West); Cal. Health and Safety Code §§11054(c)(11), 11350(a), 11364, 11374; Cal. Penal Code §§18, 19.7, 836(a)(1), 849(a), 853.5, 871.5(a)-(c), (e)-(f), 1538.5(a), (d), (f)(1), (j), (m); Cal. Vehicle Code, §§40302, 40500(a), 40504(a); and Iowa Code §805.1(1), (3)(a), (4).

STATEMENT OF THE CASE

In the Municipal Court of Los Angeles County, California, Inglewood Judicial District, the Los Angeles County District Attorney, representing the People of the State of California, filed a criminal complaint charging respondent Ronald Thomas Webb with possession of heroin, a felony under state law. See Cal. Health & Safety Code §'1350(a) (App., *post*, at A-10). The People of the state are the petitioner here, and Webb is the respondent.

At a preliminary hearing conducted in the municipal court on February 25, 1998, the magistrate granted Webb's motion to suppress the prosecution's evidence as obtained in violation of the Fourth Amendment and dismissed the complaint. In the Los Angeles County Superior Court, the prosecutor timely moved to reinstate the complaint, but the court denied the motion on March 25, 1998.

On the prosecutor's timely appeal, the California Court of Appeal, Second Appellate District, Division One, affirmed the superior court in an opinion filed January 28, 1999. App., *post*, at A-1 to A-5. On February 17 the appellate court summarily denied the People's timely petition for rehearing, and thereafter on April 28 the California Supreme Court summarily denied the People's timely petition for review. *Id.*, at A-6, A-7. The Court of Appeal denied the People's application for a stay of the issuance of the remittitur and, instead, issued its remittitur on May 17, 1999. (*Id.*, at A-8, A-9.)

A. The Facts Surrounding the Seizure of the Evidence as shown at the Preliminary Hearing

The evidence presented to the magistrate showed that at 9:15 a.m. on December 7, 1997, two Los Angeles County deputy sheriffs stopped Webb for an infraction, namely, bicycling on the sidewalk in violation of a county ordinance, see Los Angeles County Code §§15.12.010.A., 15.76.080 (*ante*, at 2), in the

vicinity of Crenshaw Boulevard and 147th Street in Los Angeles County. One of the deputies John Davoren advised Webb (erroneously) that the violation was a misdemeanor. Deputy Davoren could see the outline of a wallet in Webb's pocket. Webb "seemed a little irritated" but also nervous. He wore a bulky jacket such that if he had been armed the deputy would not have been able to see the weapon beneath the jacket. The reporter's transcript of the preliminary hearing reflects the following pertinent testimony by Deputy Davoren:

> "Q. [by the prosecutor] Then what occurred?
>
> "A. I asked him if he had any identification. He said, 'I think so. I think it might be in my wallet.'
>
> "Q. What occurred next?
>
> "A. I went to retrieve the wallet, for my safety, because he was wearing a bulky jacket and I couldn't see his waist-band area, and before I retrieved the wallet, he stated, 'Be careful. I have a kit on me.'"[1] Supplemental Clerk's Tr., 5-6.

Deputy Davoren understood Webb's statement as a heroin addict's reference to a hypodermic needle.[2] The deputy hand-

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1. Deputy Davoren also testified in the following colloquy with the magistrate:

"BY THE COURT:

"Q. Okay. But as I understand it, you went -- you tried to retrieve his I.D. because you couldn't see his midsection?

"A. That's true.

"Q. And what did you do when you said you tried to get his I.D.? You put your hand in his pockets?

"A. I asked him -- I asked him if he had any I.D., and he said, 'I think it might be in my wallet.' I saw a wallet -- I could see the outline of a wallet in his pocket, and right in the split second that I was going to retrieve it, he said, 'Be careful. I might have a kit.'

"Q. Did you ask him if you could take the wallet out?

"A. No. At that point I wanted to retrieve the wallet." Supplemental Clerk's Tr., 13, lns. 4-19.

2. See Cal. Business & Professions Code §§4140, 4321 (App., *post*, at A-10); Cal. Health & Safety Code §§11054(c)(11), 11364, 11374 (App., *post*, at A-10 to A-11).

cuffed Webb and then searched him and found, in addition to the hypodermic needle, the bindle of heroin which is the subject of the charge in the felony complaint.

B. How the Federal Question was Presented Below and Resolved by the Court of Appeal

1. The motion to suppress evidence

In front of the magistrate sitting in the municipal court, Webb filed a written motion to suppress the evidence against him as part of the preliminary hearing procedure. See Cal. Penal Code §1538.5 (App., *post*, at A-13 to A-15). As the ground of his motion, Webb argued that the deputies had violated the Fourth Amendment's proscription on unreasonable searches and seizures. He claimed:

> "[T]he 'attempt to retrieve Mr. WEBB's wallet did not meet constitutionally established standards of reasonableness. Hence, any tangible evidence and/or statements made by Mr. WEBB and any observations of him made by officers after the search are inadmissible as fruit of the poisonous tree." Webb's Mem. of P. & A., at 4, lns. 9-13 (filed in the municipal court attached to his Notice of Motion and Motion to Suppress, which were in turn attached to the People's Request for Augmentation filed in the Court of Appeal).

At the hearing on Webb's motion, his counsel argued the absence of the circumstances articulated in *Terry* v. *Ohio*, 392 U. S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) and *Sibron* v. *New York*, 392 U. S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) to justify police pat-down searches and argued, citing *Bumper* v. *North Carolina*, 391 U. S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968), that Webb's incriminating statement about the hype kit resulted from an unlawful act by Deputy Davoren in moving to retrieve Webb's wallet from his pocket. In response, the prosecutor argued that the deputy's actions were a lawful incident of Webb's arrest, albeit, the prosecutor incorrectly

treated the arrest for unlawful bicycling as one for a misdemeanor instead of an infraction.[3]

The magistrate at the hearing on the motion did not "want to be critical of the deputy," Supplemental Clerk's Tr., at 20, ln. 24, and appeared to find the deputy a candid witness. However, the magistrate said:

> "Had there been some circumstance showing that there was a risk to the officer's life and safety, I might have justified it, but I think the defense is correct. I think that the officer was precipitous and that the entry into the wallet area or retrieving of the wallet was unlawful. I don't think there's anything to justify it." *Id.*, at 18, lns. 20-25.

The magistrate further stated:

> "[C]ertainly he can stop him. I have no quarrel with the stop. I have no quarrel with the detention to investigate. I have no quarrel with his asking for his identity. [¶] He didn't do that. He said, 'Where is your I.D.?' And he says, 'In my wallet.' And the officer retrieved the I.D. himself. I think the officer should have given him the opportunity to present the I.D. . . ." *Id.*, at 19, lns. 14-20.

When the prosecutor noted that the deputy had testified he could not see Webb's midriff, the magistrate said, "What's his remedy? To pat him down; right?" *Id.*, at 20, lns. 13-14. The magistrate granted Webb's motion to suppress the evidence and dismissed the complaint.

2. The motion to reinstate the complaint

The People challenged the magistrate's ruling with a written motion to reinstate the complaint. See Cal. Penal Code §871.5 (App., *post*, at A-12 to A-13). The prosecutor argued in the written motion that the deputy searched Webb incident to a lawful arrest and persisted in the erroneous argument that

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3. For infractions, California statutes ordinarily require the officer to release the "arrested" person on a citation. See Cal. Penal Code §853.5 (App., *post*, at A-11 to A-12), Cal. Vehicle Code §§40302 (App., *post*, at A-15 to A-16), 40500(a) (App., *post*, at A-16).

Webb's bicycling violation amounted to a misdemeanor rather than an infraction. Webb's written opposition also erroneously treated the bicycling violation as a misdemeanor but, relying upon federal law as stated in *United States* v. *Mota*, 982 F. 2d 1384 (9th Cir. 1993), contended that the law did not authorize a custodial arrest and that any search could not be authorized as incident to an arrest.

At the hearing on the motion, the prosecutor continued to assert that Webb's bicycling violation amounted to a misdemeanor and argued that under federal law the deputy's authority to make a custodial arrest on a misdemeanor would have justified searching Webb. The prosecutor did argue under *Scott* v. *United States*, 436 U. S. 128, 98 S. Ct. 1717, 56 L. Ed. 2d 168 (1978) that the court should consider the matter objectively rather than basing a decision on the officer's state of mind. Webb's counsel argued that Webb was searched before he was lawfully arrested and that the circumstances did not justify a pat-down search.

The superior court ruled:

> "I THINK THAT THE OFFICER SHOULD HAVE CONDUCTED A PATDOWN BEFORE CONDUCTING A SKIN SEARCH. I'M GOING TO DENY THE PEOPLE'S MOTION." Reporter's Tr. (Mar. 25, 1998), at 19, lns. 12-14.

3. The prosecution's appeal

On the prosecution's appeal from the superior court's order denying the motion to reinstate the complaint, see Cal. Penal Code §871.5(f) (App., *post*, at A-13), the prosecution stated the issue as follows:

> "When a bicyclist is subject to arrest for a local traffic regulation, may a peace officer, to maintain view of the cyclist's hands, constitutionally retrieve the cyclist's identification from beneath bulky clothing that blocks the officer's view?" Appellant's Opening Brief, at 4.

The prosecution's brief noted that the California Constitution permits a California court to suppress relevant evidence on search and seizure grounds only if the United States Constitution

requires it. Appellant's Opening Brief, at 6; see *California* v. *Greenwood*, 486 U.S. 35, 43-45, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988); *In re Lance W.*, 37 Cal.3d 873, 884-890, 694 P. 2d 744, 210 Cal. Rptr. 631 (1985). The brief then argued that the deputies in this case operated within federal constitutional guidelines in seizing the heroin from Webb. Appellant's Opening Brief, at 6-15.

In so arguing, the prosecution's brief further noted the rule established by the California Supreme Court in *People* v. *Slaughter*, 35 Cal. 3d 629, 677 P. 2d 854, 200 Cal. Rptr. 448 (1984) that the court reviewing a ruling on a motion to reinstate the complaint directly reviews the magistrate's action, 35 Cal. 3d, at 643, and must find that "a decision of the magistrate dismissing charges, absent findings of fact, is erroneous as a matter of law if the evidentiary record discloses a rational basis for believing the defendant guilty of the charged crime," *id.*, at 642. Cf. *id.*, at 650-651 (Bird, C.J., dissenting) (standard of review is the same for legal and factual issues).

The prosecution's brief in the Court of Appeal also referred to California statutes indicating--and the California Supreme Court's holding in *People* v. *Superior Court (Simon)*, 7 Cal. 3d 186, 200, 496 P. 2d 1205, 101 Cal. Rptr. 837 (1972) (see *post*, n. 10)--that the restraint inherent in the procedures incident to a traffic citation constitutes an arrest up to the point where the officer releases the alleged offender on the promise to appear. See Cal. Penal Code §§19.7, 836(a)(1) (App., *post*, at A-11), 853.5 (App., *post*, at A-11 to A-12); Cal. Vehicle Code §§40302 (App., *post*, at A-15 to A-16), 40500(a), 40504(a) (App., *post*, at A-16). Appellant's Opening Brief, at 8.

In response, Webb's brief argued that (1) the prosecution was impermissibly raising an argument that had not been raised in the trial court and (2) the deputies accomplished the seizure of evidence from Webb by violating the Fourth Amendment. Respondent's Brief, at 1-2, 6-13. In a reply brief, the prosecution answered that (1) the Fourth Amendment permitted each of the deputies' actions in this case and (2) the prosecution had raised no new theory but that, even if it should be viewed as having done so, the reviewing court should still consider it. Appellant's Reply Brief, at 1-10.

In affirming the lower courts, the state Court of Appeal addressed only the Fourth Amendment issue and resolved it against the prosecution. The Court of Appeal said:

> "Since Webb's incriminating statement was made after the deputy 'went to retrieve' the wallet from Webb's person, the issue is whether the deputy was legally entitled to reach into Webb's pocket for the wallet. He wasn't." App., *post*, at A-3.

In discussing this result,[4] the appellate court said it rejected the "contention that this was a search incident to a lawful arrest." *Ibid.* The appellate court said Webb had not been arrested for riding his bicycle on the sidewalk. *Ibid.*; but see *People* v. *Superior Court (Simon)*, *supra*, 7 Cal.3d, at 200. In any event, said the court:

> "[R]iding a bike on the sidewalk is at most a citable offense, not one for which (without more) a person is taken into custody and, therefore, not one for which a person is searched." App., *post*, at A-3.

The Court of Appeal seemed to find support for its opinion in saying "that Deputy Davoren did not ask Webb his name and did not ask him to hand over his identification," *id.*, at A-4, and "that Deputy Davoren had absolutely no facts to support a belief that Webb was armed or dangerous or anything of the sort," *ibid.* Said the court:

> "Since there were no bulges in Webb's clothing, it is immaterial that the deputy could not see Webb's waistband. If that was all the law required, a police officer could, without more, search every jaywalker who happened to be wearing a long jacket or a coat. For these reasons, it is irrelevant that a person who refuses to present evidence of his identity, or lacks it, may be taken into custody. (*United*

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4. The Court of Appeal first said it rejected the prosecution's "effort on this appeal to recast the facts to support an argument that Webb's statement preceded the deputy's effort to reach into Webb's pocket," *Ibid.* But the prosecution never contended in any brief or argument that Webb's statement preceded the deputy's reach.

> *States* v. *Robinson*[, 414 U. S. 218, 235, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973)]; *Gustafson* v. *Florida*[, 414 U. S. 260, 265-266, 94 S. Ct. 488, 38 L. Ed. 2d 456 (1973)]; compare *Ingle* v. *Superior Court*[, 129 Cal. App. 3d 188, 193, 181 Cal. Rptr. 39 (1982)] . . . .) [¶] Since Deputy Davoren was unable to articulate *any* legitimate reason for retrieving Webb's wallet, and since he did not believe Webb was armed or dangerous, or that he had done anything more dastardly than ride his bike on the sidewalk, it follows that the search was illegal. (*Terry* v. *Ohio*[, *supra*, 392 U. S., at 20-21]; *People* v. *Dickey*[, 21 Cal. App. 4th 952, 955-956, 27 Cal. Rptr. 2d 44 (1994)] . . . .)" App., *post*, at A-4.

Since the court found that the deputy had searched Webb, and done so illegally, and "Since Webb's incriminating statement was the product of Deputy Davoren's pre-arrest search (when he went to retrieve Webb's wallet)," *ibid*., the Court of Appeal ruled the evidence should be suppressed. *Ibid*.

REASONS FOR ALLOWANCE OF THE WRIT

I. The Decision Below Involves an Important Question of Federal Law that Has Not Been, But Should Be, Settled by the Court

In this petition, the People of the State of California ask the Court to clarify the incidents of a non-custodial arrest, namely, an arrest for an infraction which, if the arrestee is adequately identified and gives a written promise to appear, will lead to immediate release. The People contend that such incidents include the authority of the officer to see the arrestee's hands and--when necessary to keep the hands in view--to pull the arrestee's wallet from his pocket for him. The Court has not resolved the issue, but the state courts came to an erroneous contrary conclusion (see pt. II, *post*) relying on some of the Court's precedents. Given the interests at stake, namely, the safety of peace officers and the citizen's right to freedom from unreasonable searches and seizures, compelling reasons support

granting certiorari. The question is an important one of federal law which should be settled by the Court.

Citizens apprehended for infractions must be prepared for constitutional intrusions incident to the apprehension, and the apprehending officers must be informed as to the limits of their authority. Furthermore, as a result of *the fruit of the poisonous tree* doctrine relied upon here by Webb before the magistrate, the admissibility of evidence in serious criminal cases may depend on the actions taken by an officer in enforcing relatively less serious laws such as the county ordinance the deputies said Webb violated.[5]

In this case, the courts have so far declared unlawful the act of a deputy sheriff taken to keep Webb's hands in view and preserve the deputies' safety. But the People believe that the Fourth Amendment allowed Deputy Davoren to remove the wallet in Webb's pocket, because the wallet *had* to be removed from Webb's pocket for Webb to produce his identification, and, as the deputy testified, Webb "was wearing a bulky jacket and I couldn't see his waistband area."

The Court has noted the potential danger that awaits a peace officer in perhaps the most common of police confrontations--the traffic stop. See, e.g., *Pennsylvania* v. *Mimms*, 434 U. S. 106, 110, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1997). Of the 61 law enforcement officers "slain feloniously in the line-of-duty in 1998," U. S. Dept. of Justice, FBI Unif. Crime Rep., Law Enforcement Officers Killed and Assaulted, 1998 Press Release (May 10, 1999), 9 were slain "while enforcing traffic laws," *ibid*. In 1997, 7 of the 65 slain officers were killed "while enforcing traffic laws," U. S. Dept. of Justice, FBI Unif. Crime Rep., Law Enforcement Officers Killed and Assaulted (1998), hereinafter, 1998 FBI Rep., at 3. Of the 49,151 assaults on law enforcement officers in 1997, 10 per cent, i.e., more than 4900, were inflicted on the officers "while making traffic pursuits or stops," *id*., at 69.

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5. The county Traffic Code makes violation of the sidewalk bicycling ordinance punishable only by a fine. Los Angeles County Code §15.12.010.A (*ante*, at 2). Possession of heroin is punishable by a prison sentence of up to three years. Cal. Penal Code §18 (App., *post*, at A-11); Cal. Health & Safety Code §11350 (App., *post*, at A-10).

One such incident in 1997 described in the 1998 FBI report deserves special mention here:

> "A deputy sheriff from the Los Angeles County Sheriff's Department was killed on October 30 around 1:15 a.m. while investigating a suspicious person on a bicycle. The 32-year-old victim, with 10 years' law enforcement experience, was on routine patrol when he observed a person riding a bicycle on the sidewalk in a business district. A witness saw the deputy try to stop the suspect who rode into a residential neighborhood with the deputy in pursuit in his patrol vehicle. Citizen informants reported hearing gunshots, and responding units found the deputy lying in the street next to the open driver's door of his vehicle. The suspect's bicycle was lying on the sidewalk near the right rear of the patrol vehicle. Physical evidence indicated that the gunman allegedly shot the deputy with a round from a .45-caliber semiautomatic handgun which entered the right rear passenger window and struck the deputy's gun hand, incapacitating it. As the victim officer exited his vehicle, the perpetrator allegedly walked around the vehicle and shot him an additional three times. One of the rounds entered the deputy's chest, just above his bullet proof vest, striking his aorta, and causing death within seconds. The alleged killer fled the area on foot but was subsequently apprehended two blocks away during an area K-9 search. A 25-year-old suspect was arrested and charged with Murder of a Peace Officer." *Id.*, at 44-45.

The FBI describes another police officer slaying resulting from "a traffic stop on a suspicious vehicle," 1998 FBI Rep., at 47, in Boise, Idaho in which officers surrounded the car; the report continues:

> "[T]he driver was ordered out and told to pull up his jacket so the officers could make sure he had no weapons in his waistband. Upon exiting the vehicle, the suspect driver allegedly pulled a handgun and fired at approaching officers, hitting one officer below his ballistic vest. . . . The victim officer, a veteran of law enforcement with nearly 9 years of experience, was struck and killed by one bullet that

entered his right side through the armhole area of his protective vest." *Ibid.*

The People ask the Court to decide that the safety of the deputies incident to the citation procedure justified the removal of Webb's wallet.

II. The Court Below Erred as a Matter of Fourth Amendment Law

The Court recently considered the incidents of a citation procedure in *Knowles* v. *Iowa*, 525 U. S. __, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998). The issue in that case was the constitutionality of "a full search of the car," 119 S. Ct., at 486, 142 L. Ed. 2d, at 496, after an Iowa police officer stopped Knowles for speeding and issued him a citation. The Court held that the procedure did not authorize "the officer, consistently with the Fourth Amendment," *ibid.*, to conduct the search. Giving consideration to the safety of the officer in the situation, the Court said:

> "[W]hile the concern for officer safety in this context may justify the 'minimal' additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search." *Id.*, 119 S. Ct., at 488, 142 L. Ed. 2d, at 498.

In Webb's case, the courts below have ruled the Fourth Amendment prohibited even a "considerably [lesser] intrusion," *Knowles* v. *Iowa*, *supra*, than "a full field-type search," *ibid.*, and even less than a typical pat-down search, see, e.g., *Terry* v. *Ohio*, *supra*, 392 U. S., at 17, n. 13;[6] Deputy Davoren moved to pull

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6. The Court related as "apt" the following description of the pat-down search:

> "'[T]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.' Priar &

(continued...)

the wallet from Webb's pocket to avoid the situation of Webb's hands being hidden beneath his bulky jacket had Webb been required to remove the wallet on his own to produce identification.[7] The intrusion seems no greater than being forced from one's automobile on a traffic stop, which the Court authorized in *Pennsylvania* v. *Mimms*, *supra*, 434 U. S. 106.

The Court's decision in *Washington* v. *Chrisman*, 455 U. S. 1, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982) illustrates the concern that the need to obtain plausible identification before issuing a citation implicates the safety of police officers. In *Chrisman*, the Court evaluated an encounter between a student at a state university in possession of liquor and a campus police officer to

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6. (...continued)
Martin, Searching and Disarming Criminals, 45 J. Crim. L. C. & P. S. 481 (1954)." *Terry* v. *Ohio*, *supra*, 392 U. S., at 17, n. 13.

7. The People have not argued on appeal and--since there is no indication that Deputy Davoren removed Webb's identification from the wallet--do not here argue that Deputy Davoren had authority to remove Webb's identification from the wallet. Cf. *Adams* v. *Williams*, 407 U. S. 143, 146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) (*Terry* stop may be appropriate "to determine his identity"). Instead, the issue here is whether the deputy had authority to remove Webb's wallet from his pocket. Presumably, once removed from the pocket, the deputy could have handed Webb back his wallet to allow Webb to retrieve from it his identification preparatory to the deputy writing up the citation. Cf. *State* v. *Newman*, 292 Or. 216, 637 P. 2d 143, 149 (1981) (Tanzer, J., dissenting), where it was said:

> Custody involves a loss of liberty and privacy to the degree reasonably required for purposes of custody. It is not a significantly greater intrusion on privacy to find out who the person is. The controlling fact is custody itself, not whether the custody is on the street or five minutes later at a holding facility. Once custody is established, it makes no difference whether the custodial officer is the arresting officer or a jailer and whether the place of custody is a police car or a building. *See United States v. Robinson*, [*supra*], and *Gustafson v. Florida*, [*supra*]. The police either can or cannot reasonably look in a pocket or purse to determine the identity of a person in custody. I would hold they can.

Also cf. *State* v. *Flynn*, 92 Wis. 2d 427, 284 N. W. 2d 710, 711-712, 715-720 (1979) (okay to search for identification person refused to present on *Terry* stop), cert. denied sub nom., *Flynn* v. *Wisconsin*, 449 U. S. 846, 101 S. Ct. 130, 66 L. Ed. 2d 55 (1980).

whom the student appeared to be below the age at which state law permitted such possession. *Id.*, 455 U. S., at 3. When the officer stopped the student Overdahl on campus and asked for identification, Overdahl advised the officer that his identification was in his room and asked the officer to wait while he retrieved it. *Ibid.* The officer told Overdahl he would have to accompany him, and did so. *Ibid.* At the room, the officer waited in the doorway, but the Court opined that he could constitutionally have entered with Overdahl. *Id.*, at 7. As justification, the Court said:

> "Every arrest must be presumed to present a risk of danger to the arresting officer. [Citation.] There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger." *Ibid.*

The Court found the "officer's need to ensure his own safety . . . compelling," *ibid.*

Just as the student's entry into his dormitory room to retrieve his identification necessarily threatened the safety of the campus officer in *Chrisman*, so here Webb's statement that he believed he had identification in a wallet--retrievable by passing his hands beneath bulky clothing--also portended a threat to the safety of the deputies who had stopped him.

Although the Washington statute under which the campus police officer arrested Overdahl evidently involved a misdemeanor,[8] the Court's opinion nowhere relies on this fact. Instead, the Court noted that "In addition, University regulations prohibit possession of alcoholic beverages on University property," *Washington* v. *Chrisman*, *supra*, 455 U. S., at 3, n. 1, as a further impetus for the campus officer's action. See, *ibid.* It thus appears that the officer in *Chrisman*, as here, must have intended initially only a non-custody arrest of Overdahl; what else explains the officer's need to follow Overdahl to his room to obtain his identification?

In this context, distinctions between misdemeanors and infractions (and *arrests* and *citation procedures*) are less important

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8. See Webb's Respondent's Brief, at 9, filed in the California Court of Appeal.

than the fact that *Chrisman*, like this case, involves what would have been a non-custody arrest, at least up to the time the campus officer saw Mr. Chrisman's more serious contraband in the room he shared with Overdahl.[9] Thus, if Webb, instead of telling Deputy Davoren his identification was in his wallet, had led Deputy Davoren to a nearby apartment to get his identification, the Fourth Amendment as construed in *Chrisman* would have validated the deputy's entry with Webb into the room.

So here, the Fourth Amendment validated the deputy's reach to pull Webb's wallet from his waistband. As stated by the Court:

> "The absence of an affirmative indication that an arrested person might have a weapon available or might attempt to escape does not diminish the arresting officer's authority to maintain custody over the arrested person." *Washington* v. *Chrisman*, *supra*, 455 U. S., at 6.[10]

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9. See *Terry* v. *Ohio*, *supra*, where the Court said:

> "The danger in the logic which proceeds upon distinctions between a 'stop' and an 'arrest,' or 'seizure' of the person, and between a 'frisk' and a 'search' is twofold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation." 392 U. S., at 17.

A footnote at that point in the opinion includes this language:

> "In our view the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness." *Id.*, at 18, n. 15.

10. At least under California law, the officer possessed such authority to maintain custody of Webb until such time as Webb had signed a promise to appear on the bicycling violation. Cf. *Michigan* v. *DeFillippo*, 443 U. S. 31, 36, 99 S. Ct. 2627, 61 L. Ed. 2d 343 (1979) ("Whether an officer is authorized to make an arrest ordinarily depends, in the first instance, on state law.") In contrast to the Iowa statute reviewed in *Knowles* v. *Iowa*, *supra*, which refers to the citation procedure there as *in lieu of an arrest*, see Iowa

(continued...)

In making this statement, the majority opinion in *Chrisman* cited *Pennsylvania* v. *Mimms*, *supra*, 434 U. S., at 109-110. *Mimms*, like this case, involved an initial stop, not to arrest for a misdemeanor or a felony, but to issue "a traffic summons," *id.*, at 107. The pages in *Mimms* cited for this statement in *Chrisman* include the following language:

> "[W]e need presently deal only with the narrow question of whether the order to get out of the car, issued after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment. This inquiry must therefore focus not on the intrusion resulting from the request to stop the vehicle or from the later 'pat-down,' but on the incremental intrusion resulting from the request to get out of the car once the vehicle was lawfully stopped. [¶] Placing the question in this narrow frame, we look first to that side of the balance which bears the officer's interest in taking the action that he did. The State freely concedes the officer had no reason to suspect foul play from the particular driver at the time of the stop, there having been nothing unusual or suspicious about his behavior. . . . [¶] We think it too plain for argument that the State's proffered justification--the safety of the officer--is both legitimate and weighty." *Pennsylvania* v. *Mimms*, *supra*, 434 U. S., at 109-110.

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10. (...continued)
Code §805.1(1), (3)(a), (4) (App., *post*, at A-17), the California Supreme Court has read the California statutes and noted:

> "[W]hen the officer determines there is probable cause to believe that an offense has been committed and begins the process of citing the violator to appear in court [citations], an 'arrest' takes place at least in the technical sense: ' . . . [T]he violator is, during the period immediately preceding his execution of the promise to appear, under arrest. . . . The Vehicle Code . . . refers to the person awaiting citation as "the arrested person." . . . .'"

People v. *Superior Court (Simon)*, *supra*, 7 Cal. 3d, at 200; see Cal. Vehicle Code §40302 (App., *post*, at A-15 to A-16). *Knowles* has been described as a "search incident to citation" case. See, e.g., *United States* v. *McLaughlin*, 170 F. 3d 889, 891 (9th Cir. 1999); see also, *id.*, at 895 (Trott, J., concurring).

Mimms noted that in *United States* v. *Robinson*, *supra*, 414 U. S., at 234, the Court had already "declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations," *Pennsylvania* v. *Mimms*, *supra*, 434 U. S., at 110. Against "the intrusion into the driver's personal liberty occasioned . . . by the order to get out of the car," *id.*, at 111, *Mimms* found the "legitimate concerns for the officer's safety," *ibid.*, to be the prevailing interest under its Fourth Amendment analysis. *Ibid.*

The enforceability of the promise to appear depends upon the arresting officer accurately identifying the arrestee. Here, "in order to determine his identity," *Adams* v. *Williams*, *supra*, 407 U. S., at 146, the Fourth Amendment permitted "reaching to the spot," *id.*, at 148, where Deputy Davoren had seen the outline of Webb's wallet (and, if the deputy had not already seen it, he could have asked where it was)[11] and was, under the circumstances, a permissible incident of the non-custodial arrest/citation procedure.

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11. Cf. *State* v. *Rawlings*, 121 Idaho 930, 829 P. 2d 520, 521, 523-524 (1992) (suspect threatened with pat-down "to see if he had a wallet," 829 P. 2d, at 521, throws Excedrin bottle with dope).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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By

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APPENDIX

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Appellant, v. RONALD THOMAS WEBB, Defendant and Respondent.	B 123257 (Super. Ct. No. YA035336) **COURT OF APPEAL** **-SECOND DIST.** **FILED** **JAN 28 1999** **JOSEPH A. LANE Clerk** **C. HON** **[stamp]**

APPEAL from a judgment of the Superior Court of Los Angeles County, Donald F. Pitts, Judge. Affirmed.

Gil Garcetti, District Attorney, Patrick D. Moran and Brent Riggs, Deputy District Attorneys, for Plaintiff and Appellant.

Michael P. Judge, Public Defender, Albert J. Menaster, Gail Bristo, and Alex Ricciardulli, Deputy Public Defenders, for Defendant and Respondent.

A magistrate dismissed a drug charge based upon an illegal search. The superior court agreed with the magistrate and denied the People's motion to reinstate the complaint. The People appeal. We agree with the magistrate and the superior court, and therefore affirm.

FACTS

At 9:15 one morning, Ronald Webb was riding his bicycle on a sidewalk in the area of Crenshaw Boulevard and 147th Street. Webb was stopped by Los Angeles County Deputy Sheriff John Davoren and told, inaccurately, that "it was a misdemeanor to ride a bike on the sidewalk" (in fact, it is only an infraction). Deputy Davoren did not ask Webb for his name but asked instead if he had any identification. Webb answered, I think so. I think it might be in my wallet." When asked what occurred next, Deputy Davoren testified, I went to retrieve the wallet, for my safety, because he was wearing a bulky jacket and I couldn't see his waistband area, and before I retrieved the wallet, he stated, 'Be careful. I have a kit on me.'" Deputy Davoren retrieved the wallet. When asked what happened next, the deputy said, "Based on the misdemeanor [*sic*] of riding a bike on the sidewalk, coupled with his statements, I placed the defendant under arrest." Deputy Davoren then searched Webb and found a hypodermic needle and a bindle of heroin (the "kit" referred to by Davoren).

Deputy Davoren had not received any reports that Webb was carrying a weapon, and he had no information to suggest that Webb had ever carried a weapon, or that any person in the area was carrying a weapon. The *only* reason the deputy stopped Webb was for "a simple riding a bicycle on the sidewalk," not on suspicion of any other offense. When Deputy Davoren asked Webb to stop, Webb complied. Although he was "acting nervous" or "a little irritated" about being stopped, he did not make any furtive gesture or reach for his pockets or attempt to run. The *only* reason the deputy decided to reach into Webb's jacket was for his identification, because he "was unable to see [Webb's] waistband area." There were no bulges in his clothing and the deputy did not see anything out of the ordinary.

A complaint was filed charging Webb with possession of heroin. At Webb's preliminary hearing, Webb moved to suppress the heroin on the ground that there was no justification for the deputy's decision to reach into Webb's pocket for his wallet. Over the People's objection, the magistrate dismissed the complaint. The People then moved in superior court for an order

compelling the magistrate to reinstate the charges. (Pen. Code, § 871.5.) That motion was denied. The People appeal.

DISCUSSION

Since Webb's incriminating statement was made only after the deputy "went to retrieve" the wallet from Webb's person, the issue is whether the deputy was legally entitled to reach into Webb's pocket for the wallet. He wasn't.

First, we reject the People's effort on this appeal to recast the facts to support an argument that Webb's statement preceded the deputy's effort to reach into Webb's pocket. The deputy's testimony is clear, and he plainly testified that the statement was made *after* the deputy "went to retrieve" the wallet. That is how the case was argued to the magistrate and to the superior court. That is how it will be resolved here.

Second, we reject the People's contention that this was a search incident to a lawful arrest. Whatever merit there may be to the People's contention that Webb violated the Los Angeles County Code by riding his bicycle on the sidewalk, that fact is irrelevant. Webb was not cited or arrested for that violation. He was arrested for possession of heroin. Accordingly, it adds nothing to say that a peace officer may arrest without a warrant when a public offense has been committed in his presence. In any event, riding a bike on the sidewalk is at most a citable offense, not one for which (without more) a person is taken into custody and, therefore, not one for which a person is searched. We summarily reject the People's bootstrap argument - that the arresting officer can avoid writing up a notice to appear by arresting a person and taking him to the magistrate when the person does not have "satisfactory" identification. (See (*Ingle* v. *Superior Court* (1982) 129 Cal.App.3d 188, 194 [citation requires confirmation of identity].) If Deputy Davoren had asked Webb for his name or asked him to show identification and if Webb had refused, this might be an issue. On the facts of this case, it is not.

It is undisputed that Deputy Davoren did not ask Webb his name and did not ask him to hand over his identification. (*People* v. *Monroe* (1993) 12 Cal.App.4th 1174, 1188 [an officer must, at a minimum, ask a citee for a driver's license].) It is also undisputed that Deputy Davoren had absolutely no facts to support a belief that Webb was armed or dangerous or anything of the sort. Since there were no bulges in Webb's clothing, it is immaterial that the deputy could not see Webb's waistband. If that was all the law required, a police officer could, without more, search every jaywalker who happened to be wearing a long jacket or a coat. For these reasons, it is irrelevant that a person who refuses to present evidence of his identity, or lacks it, may be taken into custody. (*United States* v. *Robinson* (1973) 414 U.S. 218, 235; *Gustafson* v. *Florida* (1973) 414 U.S. 260, 265-266; compare *Ingle* v. *Superior Court*, *supra*, 129 Cal.App.3d at p. 193 [a routine arrest for a traffic violation does not justify a search for contraband].)

Since Deputy Davoren was unable to articulate ***any*** legitimate reason for retrieving Webb's wallet, and since he did not believe Webb was armed or dangerous, or that he had done anything more dastardly than ride his bike on the sidewalk, it follows that the search was illegal. (*Terry* v. *Ohio* (1968) 392 U.S. 1, 20-21; *People* v. *Dickey* (1994) 21 Cal.App.4th 952, 955-956 [the officer must be able to point to specific and articulable facts together with rational inferences therefrom which reasonably support a suspicion that the suspect is armed and dangerous].) Since Webb's incriminating statement was the product of Deputy Davoren's pre-arrest search (when he went to retrieve Webb's wallet), the magistrate and the superior court properly concluded that the statement and the kit, found only after the arrest, had to be suppressed.

DISPOSITION

The judgment (order) is affirmed.

NOT TO BE PUBLISHED.

VOGEL (Miriam A.), J.

We concur:
ORTEGA, Acting P.J.
MASTERSON, J.

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION: 1 DATE: February 17, 1999

Office of the District Attorney
Brentford J. Ferreira
849 South Broadway
11th Floor
Los Angeles, CA 90014-3268

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff And Appellant
v.
WEBB, RONALD THOMAS
Defendant-Respondent

B123257
Los Angeles County No. YA035336

THE COURT:

Petition for rehearing is denied.

Second Appellate District, Division One, No. B123257
S077159
IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Appellant

v.

RONALD THOMAS WEBB, Respondent

SUPREME COURT
FILED
APR 28 1999

Robert Wandruff Clerk

DEPUTY
[stamp]

Appellant's petition for review DENIED.

GEORGE

Chief Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, v.	)B123257))(LASC No. YA035336))
RONALD THOMAS WEBB, Defendant and Respondent.	)ORDER))

THE COURT:
Application of appellant for stay of issuance of remittitur is:
__granted, _x_ denied.

MAY 17 1999 ORTEGA, J.
Acting Presiding Justice

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 1

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

The People v Webb
B123257
Los Angeles County No. YA035336

*** REMITTITUR ***

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on January 28, 1999 and that this order, opinion or decision has now become final.

Witness my hand and the seal of the Court affixed
at my office this MAY 17 1999

Joseph A. Lane, Clerk

by: SHIRLEY BEAUX
Deputy Clerk

cc: All Counsel
File

Statutes involved in the issues

"No person shall possess or have under his or her control any hypodermic needle or syringe except when acquired in accordance with this article." Cal. Business & Professions Code Ann. §4140 (West Supp. 1999).

"(a) Any person who knowingly violates any of the provisions of this chapter [Chapter 9, "Pharmacy," of Division 2, "Healing Arts], when no other penalty is provided, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars ($200), and not more than two thousand dollars ($2000), or by imprisonment of not less than 30 days nor exceeding six months, or by both that fine and imprisonment.

"(b) In all other instances, any person who violates any of the provisions of this chapter, when no other penalty is provided, is guilty of an infraction, and upon conviction thereof may be punished by a fine not to exceed one thousand dollars ($1000)." Cal. Business & Professions Code Ann. §4321 (West Supp. 1999).

"Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

". . . .

"(11) Heroin." Cal. Health & Safety Code Ann. §11054(c)(11) (West Supp. 1999).

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision . . . (c) . . . of Section 11054, . . . shall be punished by imprisonment in the state prison." Cal. Health & Safety Code Ann. §11350(a) (West Supp. 1999).

"It is unlawful to possess . . . any device, contrivance, instrument, or paraphernalia used for unlawfully injecting . . . a controlled substance specified in subdivision . . . (c) . . . of Sec-

tion 11054 . . . ." Cal. Health & Safety Code Ann. §11364 (West 1991).

"Every person who violates or fails to comply with any provision of this division [Division 10, "Uniform Controlled Substances Act," §§ 11000-11651], except one for which a penalty is otherwise in this division specifically provided, is guilty of a misdemeanor punishable by a fine in a sum not less than thirty dollars ($30) nor more than five hundred dollars ($500), or by imprisonment for not less than 15 nor more than 180 days, or by both." Cal. Health & Safety Code Ann. §11374 (West 1991).

"Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; . . . ." Cal. Penal Code Ann. §18 (West 1999).

"Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to, powers of peace officers, ..." Cal Penal Code Ann. §19.7 (West 1999).

"A peace officer . . . without a warrant, may arrest a person whenever any of the following circumstances occur:

"(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence." Cal. Penal Code Ann. §836(a)(1) (West Supp. 1999).

"When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate." Cal. Penal Code Ann. §849(a) (West 1985).

"Except as otherwise provided by law, in any case in which a person is arrested for an offense declared to be an infraction, the

person may be released according to the procedures set forth by this chapter for the release of persons arrested for an offense declared to be a misdemeanor. In all cases, except as specified in Sections 40302, 40303, 40305, and 40305.5 of the Vehicle Code, in which a person is arrested for an infraction, a peace officer shall only require the arrestee to present his driver's license or other satisfactory evidence of his identity for examination and to sign a written promise to appear. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the promise to appear. . . . Only if the arrestee refuses to sign a written promise, has no satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody." Cal. Penal Code Ann. §853.5 (West Supp. 1999).

"(a) When an action is dismissed by a magistrate pursuant to Section 859b, 861, 871, 1008, 1381, 1381.5, 1385, 1387, or 1389 of this code or Section 41403 of the Vehicle Code, or a portion thereof is dismissed pursuant to those same sections which may not be charged by information under Section 739, the prosecutor may make a motion in the superior court within 15 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate.

"(b) Notice of the motion shall be made to the defendant and the magistrate. The only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

"(c) The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refiling the dismissed action, or portion thereof.

"(d) . . . .

"(e) When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings and when so ordered, issue an order of commitment for the

reinstated offense or offenses within 10 days after the superior court has entered an order to that effect or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

"(f) Pursuant to paragraph (9) of subdivision (a) of Section 1238 the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. That review may only be sought in the event the defendant is held to answer pursuant to Section 872.

"(g) . . . ." Cal. Penal Code Ann. §871.5 (West Supp. 1999).

"(a)(1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

"(A) The search or seizure without a warrant was unreasonable.

". . . .

"(2) A motion pursuant to paragraph (1) shall be made in writing and accompanied by a memorandum of points and authorities and proof of service. The memorandum shall list the specific items of property or evidence sought to be returned or suppressed and shall set forth the factual basis and the legal authorities that demonstrate why the motion should be granted.

". . . .

"(c) Whenever a search or seizure motion is made in the municipal or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

"(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section, Section 871.5, 1238, or 1466 are utilized by the people.

". . . .

"(f) (1) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made in the superior

court only upon filing of an information, except that the defendant may make the motion at the preliminary hearing in the municipal court or in the superior court in a county in which there is no municipal court, but the motion shall be restricted to evidence sought to be introduced by the people at the preliminary hearing.

"(2) The motion may be made at the preliminary examination only if at least five court days before the date set for the preliminary examination the defendant has filed and personally served on the people a written motion accompanied by a memorandum of points and authorities as required by paragraph (2) of subdivision (a). At the preliminary examination, the magistrate may grant the defendant a continuance for the purpose of filing the motion and serving the motion upon the people, at least five court days before resumption of the examination, upon a showing that the defendant or his or her attorney of record was not aware of the evidence or was not aware of the grounds for suppression before the preliminary examination.

"(3) Any written response by the people to the motion described in paragraph (2) shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to the hearing at which the motion is to be made.

". . . .

"(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). In the alternative, the people may move to reinstate the complaint, or those parts of the complaint for which the defendant was not held to answer, pursuant to Section 871.5. . . . If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

". . . .

"(l) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to

a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the parties, pending the time for the initiation of these proceedings. . . .

"(m) The proceedings provided for in this section, and Sections 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him or her. . . .

"(n) This section establishes only the procedure for suppression of evidence and return of property, and does not establish or alter any substantive ground for suppression of evidence or return of property. Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the United States and California Constitutions. Nothing in this section shall be construed as altering (1) the law of standing to raise the issue of an unreasonable search or seizure; (2) the law relating to the status of the person conducting the search or seizure; (3) the law relating to the burden of proof regarding the search or seizure; (4) the law relating to the reasonableness of a search or seizure regardless of any warrant that may have been utilized; or (5) the procedure and law relating to a motion made pursuant to Section 871.5 or 995, or the procedures that may be initiated after the granting or denial of such a motion.

". . . ." Cal. Penal Code Ann. §1538.5 (West Supp. 1999).

"Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

"(a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.

"(b) When the person arrested refuses to give his written promise to appear in court.

"(c) When the person arrested demands an immediate appearance before a magistrate.

"(d) When the person arrested is charged with violating Section 23152." Cal. Vehicle Code Ann. §40302 (West 1985).

"Whenever a person is arrested . . . for a violation of an ordinance of a city or county relating to traffic offenses and he is not immediately taken before a magistrate, as provided in this chapter, the arresting officer shall prepare in triplicate a written notice to appear in court or before a person authorized to receive a deposit of bail, containing the name and address of the person, ..." Cal. Vehicle Code Ann. §40500(a) (West Supp. 1999).

"The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his or her written promise to appear in court or before a person authorized to receive a deposit of bail by signing two copies of the notice which shall be retained by the officer, ..." Cal. Vehicle Code Ann. §40504(a) (West Supp. 1999).

"1. Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

". . . .

"3. a. State and local law enforcement agencies in the state of Iowa may cooperate to formulate uniform guidelines that will provide for the maximum possible use of citations in lieu of arrest and in lieu of continued custody for offenses for which citations are authorized. . . .

". . . .

"4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of R. Cr. P. section 27, subsection 2, paragraph 'a', Ia. Ct. Rules, 3rd ed.

". . . ." Iowa Code Ann. §805.1 (West Supp. 1999).